IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.965 OF 1992

Shri Anil Tukaram Patil,)
Age: 38 years, Agriculturist,)
R/o.Murgundi, Taluka Athani,)
District Belgaum, Karnataka State.)...Appellant

Versus

1. Vishnu Tukaram Shinde (Patil),)
   Adult, Occ:Agriculturist,)

2. Sau.Sonabai Vishnu Shinde (Patil),)
   Occ: Household,)
   Both R/o.Budhgaon, Taluka Miraj,)
   District Sangli)

3. The Canara Bank, Branch at Athani,)
   District Belgaum, Karnataka State)

4. The United India Insurance Company)
   Limited, Branch Nipani,)
   District Belgaum, Karnataka State.)..Respondents

Shri Tejpal S. Ingale for the Appellant.

Shri Raju Yamgar i/by Nitin Pradhan and Ms S.D.Khot for the Respondent Nos.1 and 2.

Shri S.R.Singh for the Respondent No.4.

CORAM : ABHAY S. OKA, J.

DATE : JANUARY 18, 2007.

JUDGMENT:

1. By this First Appeal exception has been taken to Judgment and Award dated 13th May, 1991 passed by the learned Member of the Motor Accident Claims Tribunal at Sangli in a Claim Petition filed by the

first and second Respondents.

2. The case of the first and second Respondents is that their only son Divakar aged about seven years died in a motor accident on 28th May, 1987 at about 07.00 a.m in an accident involving a tractor and trolley of the Appellant. The Appellant had brought his tractor alongwith his trolley to the land of first Respondent's cousin Ramchandra Ganpati Patil. The Appellant loaded the trolley with manure in the said land and he was proceeding towards the land of Ramchandra Patil. The Appellant found that there was a water canal and at that time the water was released through the canal. As it was not possible to take tractor and trolley further as the land near the canal had become damp, according to the case of the first and second Respondents, the Appellant halted the tractor for a while and suddenly started it and took it in reverse without looking on the rear side to find out whether there was any one present. Thus, a dash was given to Dinkar, the son of the first and second Respondents and he fell down on the ground and he was run over by the rear wheel of the trolley. He died on the spot. The case of the Appellant was that there was no negligence on his part. His case in the written statement is that the land by the side of the

canal was ascending. He halted the truck and while he was thinking as to which way he should adopt, the tractor and trolley slided behind. He noticed that the boy was run over by the trolley only after he heard some persons shouting. His contention is that he was acquitted in prosecution lodged against him.

3. The tractor and trolley was admittedly insured with the fourth Respondent. The defence of the fourth Respondent was that there was breach of terms and conditions of the policy in as much as per the permit granted to use the tractor, the same could have been used within the State of Karnataka and there was no permit granted to use the vehicle in Maharashtra. The contention was that the Appellant committed breach of the terms and conditions of the permit and that is how he has committed breach of the policy conditions. It was also submitted that the policy did not cover the risk arising out of use of tractor for hire.

4. The learned Member of the Tribunal held that the accident occurred due to negligence on the part of the Appellant. The learned Member held that the permit granted to the Appellant was to use the tractor and trailer in the State of Karnataka and there was no permit granted to use the same in the State of

Maharashtra. It was held that thus the Appellant has committed breach of terms and conditions of the policy. It was also held that at the relevant time the tractor was being used for transporting manure of Ramchandra Patil. The learned Member held that the first and second Respondents were entitled to compensation of Rs.50,000/- with interest at the rate of 12% per annum.

5. The learned Advocate for the Appellant submitted that there was no evidence on record to show any negligence on the part of the Appellant. He submitted that there was no deliberate breach of the conditions of the policy established against the Appellant by the fourth Respondent Insurance Company. He submitted that negligence on the part of the Appellant in observing the terms and conditions of the policy ought to have been established by the fourth Respondent. He submitted that therefore, the Insurance Company could not have been exonerated. He placed reliance on a consent award made in M.A.C Application No.84 of 1986 which is sought to be produced by filing Civil Application No.2129 of 2006. The said Civil Application is filed seeking production of the award by way of additional evidence. His submission is that in case of the same tractor and

trailer an accident took place in the State of Maharashtra. The Claim Petition No.84 of 1986 arose out of the said accident. His submission is that the fourth Respondent accepted its liability and paid compensation and infact a consent award was passed. He, therefore, submitted that the fourth Respondent was precluded from contending that as per terms and conditions of the policy, the tractor and trailer could not have been used by the Appellant in the State of Maharashtra. The learned Advocate for the Appellant placed reliance on the decision of the Apex court in the case of **B.V.Nagaraju Vs. Oriental Insurance Company Ltd. [1996(4) Supreme Court Cases Page 647]**.

6. The learned Advocate appearing for the fourth Respondent submitted that admittedly there was a breach of the terms and conditions of the policy on the part of the appellant and therefore, the fourth Respondent had discharged its burden. He placed reliance on the decision of the Apex Court in the case of **National Insurance Company Limited Vs. Challa Bharathamma and others [(2004) 8 Supreme Court Cases Page 517]**. The learned Advocate for the first and second Respondents supported the impugned Judgment and Award.

7. I have considered the submissions made by the Advocates appearing for the parties. The policy of insurance is produced at Exhibit 41. The policy contains a clause under the heading "Limitation as to use". The said clause provides that the use of the tractor and trailer was for agriculture and to carry own goods.

8. It will be necessary to refer to the evidence of the Appellant in the examination-in-chief. He stated that the tractor was brought to Dudgaon for agricultural work of the first and second Respondents and he himself was driving the tractor. Thus, in examination-in-chief itself he admitted that the tractor and trailer was brought not for his personal use but for the benefit of the first and second Respondents. In cross-examination he admitted that he had not obtained permission from Government of Maharashtra for running the tractor in this State. He also admitted that tractor was meant for his own agricultural use and on the date of the accident the tractor was used for transporting manure of Ramchandra Patil. Infact, his version is that at the relevant time, manure of Ramchandra Patil was already loaded in the trailer. Though he denied that he had let out the

tractor to Ramchandra Patil, he did not examine the said Ramchandra Patil. In cross-examination he admitted that he was not on enmical terms with Ramchandra Patil. The cross-examination shows that the Appellant himself was aware that the tractor was meant for his own agricultural use and on the relevant date, the tractor was being used for transporting the manure of Ramchandra Patil. There is a clear admission that he was not holding a permit to use the tractor and trailer in the State of Maharashtra. Thus, it is obvious that admittedly there is a breach of terms and conditions of the policy on the part of the Appellant. This is not a case where breach was committed without the knowledge of the Appellant in as much as he himself brought the tractor and trailer within the limits of State of Maharashtra and he himself stated before the court that at that time he was transporting the manure owned by the said Ramchandra.

9. The learned Advocate for the Appellant relied upon the decision of the Apex Court in the case of B.V.Nagaraju (supra). The question before the Apex Court was whether the alleged breach of carrying human beings in goods vehicle more than the number permitted in terms of the insurance policy is such fundamental a

breach so as to afford ground to the insurer to avoid liability altogether. The Apex Court considered its earlier decision in the case of **Skandia Insurance Company Limited Vs. Kokilaben Chandravan and Others [(1987) 2 Supreme Court Cases Page 654]**. Apart from the fact that the issue which arose for consideration before the Apex Court is different, the view taken by the Apex Court in the case of Skandia Insurance Company (supra) was considered by the larger bench of the Apex Court in the case of National Insurance Comapny Ltd. Vs. Swaransingh and Others [(2004) 3 Supreme Court Cases Page 297]. The view taken by the larger bench is that the insurer has to prove that insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the policy conditions. In the present case, the Appellant himself admitted that he was aware about the condition of using the vehicle for own agricultural purpose and he was also aware that he had not obtained a permit from the State of Maharashtra.

10. In my considered view the learned Member of the Tribunal was right in holding that breach of policy conditions on the part of the Appellant-Insured was established. Infact, the same is established on the basis of evidence of the Appellant himself.

11. So far as negligence is concerned, the Appellant has stepped into witness box and has deposed in examination-in-chief that he had stopped the tractor and trailer after noticing the dampness in the land as a result of release of water through the canal. In examination-in-chief he stated that while he was inspecting the road, the tractor automatically moved behind and the boy came under the wheel of the trolley who died on the spot. In examination-in-chief, he stated that he never took the tractor in reverse gear. In cross-examination, he admitted that his tractor was having good hand brake and foot brake. He admitted that while he was sitting in the driver’s seat, the tractor moved back. It is not the case of the Appellant that he had applied the hand brake. Any reasonable and prudent driver in his place would have applied hand brake. However, that case is not made out by the Appellant. When the tractor started moving back, he was very much sitting in the driver’s seat. Thus, there is a failure on the part of the Appellant to take care and that is the reason why a finding of negligence has been recorded by the Tribunal against the Appellant. So far as quantum is concerned, the deceased was the only son of the Respondents. At the time of death, his age was

seven years. Therefore, quantum of Rs.50,000/- cannot be said to be on the higher side and it is just and proper compensation.

12. Reliance placed by the Advocate for the Appellant on the compromise entered into by the fourth Respondent in a claim involving the same tractor and trolley will not help the Appellant. The compromise which is annexed to the Civil Application for additional evidence shows that the same was arrived at before Lok Adalat. It is not clear whether in the said case a defence was taken by the fourth Respondent that the tractor and trolley was being used for benefit of a stranger. The said compromise cannot help the Appellant for fastening the liability against the fourth Respondent in this case. As a matter of law, the Appellant will have to establish the liability of the fourth Respondent.

13. Considering the aforesaid aspects, I find that no case is made out for interference.

14. Hence, I pass the following order:

(i) The Appeal is dismissed with no orders as to costs.

(ii) Time of three months is granted to the Appellant to pay the balance amount as per the Award.

JUDGE